

JUL 21 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of Sections of the)	MM Docket No. 92-266
Cable Television Consumer)	
Protection and Competition Act)	
of 1992)	
)	
Rate Regulation)	

UNITED STATES TELEPHONE ASSOCIATION
OPPOSITION TO PETITIONS FOR RECONSIDERATION

The United States Telephone Association (USTA) respectfully submits its Opposition to Petitions for Reconsideration filed July 7, 1993 in the above-referenced proceeding. USTA is the principal trade association of the exchange carrier industry. Its members provide over 98 percent of the exchange carrier-provided access lines in the U. S. USTA has participated in this proceeding since its inception.

The Commission's efforts to implement sections 623, 612 and 622(c) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act)¹, are critically important in carrying out its statutory obligation to protect consumers from unreasonable cable rates. The monopoly power found by Congress to exist in the core cable business can be and has been used to harm consumers, to

¹Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation, MM Docket No. 92-266, FCC 93-177, Report and Order and Further Notice of Proposed Rulemaking, released May 3, 1993. (Report and Order).

exclude competition and to gain advantages in related markets.

In previous filings, USTA has shown that an enormous amount of monopoly rents is taken out of cable systems in system sales and in basic cable rates, because of the presence of significant market power.²

As Bell Atlantic points out in its Petition for Reconsideration, "competition between the cable and telephone industries is increasing rapidly as cable moves extensively into

competitors with access to supranormal revenues.

The 1992 Cable Act directs the Commission to take certain affirmative steps to eliminate the extraction of monopoly rents. Fulfilling this mandate need not result in the comprehensive regulation afforded telephone companies, but could move the Commission toward regulatory parity by demonstrating, once again, how common carrier regulation of local telephone companies is unreasonably onerous in light of the current access marketplace.

The Commission has adopted a price cap scheme for cable operators that does not include the aspects of traditional rate

available under a purer price cap regulatory system, such incentives should also be made available to telephone companies.

USTA, therefore, opposes the majority of the Petitions filed on July 7, 1993 in this proceeding, which seek to reduce further the limited regulation adopted by the Commission in its Report and Order released May 3, 1993 in this proceeding and to exploit the statutory scheme in ways that would disadvantage both cable customers and telephone companies. These Petitions seek relaxation of the initial benchmark rates⁵, the definition and treatment of external/exogenous costs⁶, the number of allowed rate adjustments⁷, the pass-through of affiliated programming costs⁸, the uniform rate structure,⁹ the treatment of charges for equipment, installation and additional outlets.¹⁰ the limits on

flow-through of capital investment,¹¹ and the tier neutral rate regulation.¹² The Petitions fail to provide sufficient support to modify these requirements.

Given the time and resource constraints which the Commission has been laboring under and given the lack of empirical evidence that the Commission's rate regulation scheme will unduly burden the cable market, USTA recommends that the Commission proceed to implement cable rate regulation and to schedule a comprehensive performance review as it did when it adopted price cap regulation for telephone companies. In that proceeding, the Commission determined that a comprehensive performance review, to begin after three years of price cap regulation, should be undertaken to evaluate the regulatory system as implemented and to measure telephone company performance under that system.¹³ The Commission stated that it would review telephone company prices, earnings, service quality and technological progressiveness. The Commission noted that the initial period of price cap regulation should be long enough for incentives to operate. Thus, the Commission found that a four year period without major adjustment would be reasonable.

¹¹Discovery Communications, Inc. at p. 4; Corning Inc. and Scientific-Atlanta, Inc. at p.5.

¹²Tele-Communications, Inc. at p. 27 and Booth American Company, et.al., at p. 8.

¹³Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 at ¶¶ 385-394 (1990).

As with telephone company price cap regulation, a performance review of cable regulation would permit the Commission to examine many of the issues raised by the Petitioners based on actual experience. The Commission could monitor whether the rates paid by cable customers were decreasing and whether technological innovation was expanding. A performance review would enable the Commission to make the necessary adjustments to better achieve those goals.¹⁴

The Commission already has committed to continue to monitor the issue of network improvement costs and to review its decision if it finds that the development of new technologies and services is being hindered.¹⁵ USTA suggests that the Commission address the issues raised by Petitioners in a comprehensive performance

¹⁴See, National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095, 1135 (D.C.Cir. 1984), cert. denied 469 U.S. 1227 (1985) ("The gradual implementation of new rates and policies is a standard tool of the Commission.") and Western Union v. FCC, 815 F.2d 1495 (D.C.Cir. 1987).

¹⁵Report and Order at footnote 608.

review of cable rate regulation after it has had sufficient opportunity to observe the regulatory system as implemented, but reject any change at this time based on the Petitions.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By:

A handwritten signature in cursive script, appearing to read "Linda Kent", is written over a horizontal line.

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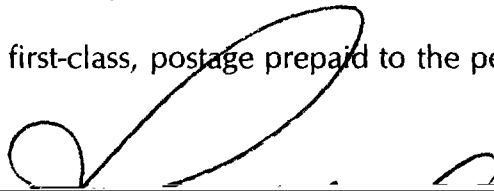
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July 21, 1993

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on July 21, 1993 copies of the Opposition to Petitions for Reconsideration of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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